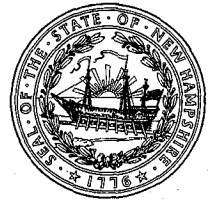




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

July 23, 2013

H. Curtis Spalding, Regional Administrator  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

**Re: State Implementation Plan Revision Submittal for Env-A 101.104 – Definition of “Incinerator”**

Dear Administrator Spalding:

Pursuant to section 110 of the federal Clean Air Act as amended, the state of New Hampshire hereby submits for approval the subject proposed State Implementation Plan (SIP) revision and one exact electronic copy thereof on a disk (enclosed). As Governor Maggie Hassan’s designee, I am requesting EPA’s approval of this revision, which consists of the recent amendment to administrative rule **Env-A 101.104**, *Definition of “Incinerator.”*

Env-A 101.104 defines “incinerator,” and the recent amendment added “wood waste burners” to the definition.

On August 31, 2000, Department of Environmental Services (DES) submitted an earlier version of Env-A 101.104 (then numbered 101.152) as a SIP revision. DES is hereby withdrawing that submittal, as the current submittal contains the version of the rule that took effect on April 23, 2013, superseding the earlier rule.

This submittal contains all documentation necessary to satisfy the SIP completeness requirements pursuant to 40 CFR Part 51, Appendix V. The following administrative materials are included for your review:

- a. Evidence of the rule’s adoption
- b. Evidence of legal authority
- c. A copy of the rule
- d. Evidence that all the State’s legal requirements were followed in adopting the rule and submitting the SIP revision
- e. Evidence that the public notice was given in accordance with EPA procedures
- f. Certification that, if requested, the public hearing was held in accordance with the public notice
- g. A compilation of public comments and the State’s responses thereto

One of the requirements of Appendix V is that the documentation include the date of adoption, as well as the effective date, of the rule. In accordance with RSA 541-A:14, an agency

may adopt a rule after all procedures have been completed. DES adopts a rule on the day its Commissioner signs a letter advising that he has adopted the rule and files the adopted rule with the Director of the Office of Legislative Services (OLS). The rule takes effect the day after it is filed unless a different date is requested in the letter. The attachments hereto contain a letter from the DES Commissioner to the Director of the OLS, documenting the adoption of the rule, as well as written documentation from the OLS as to the filing and effective dates of the rule.

Technical support materials are not included for the change, since it is not anticipated that the enclosed rule will affect previous demonstrations regarding attainment of the national ambient air quality standards.

Should you have any questions regarding this submittal, please contact Karla McManus, Planning and Rules Manager, at [karla.mcmanus@des.nh.gov](mailto:karla.mcmanus@des.nh.gov) or (603) 271-6854, or Barbara L. Hoffman, SIP Planning Manager, at [barbara.hoffman@des.nh.gov](mailto:barbara.hoffman@des.nh.gov) or (603) 271-7874. Thank you for your assistance.

Sincerely,



Craig A. Wright  
Acting Director  
Air Resources Division

Enclosures

cc: Dave Conroy, EPA  
Anne Arnold, EPA  
Alison Simcox, EPA

**EVIDENCE OF THE RULE'S ADOPTION**

40 CFR Part 51, Appendix V, 2.1(b)

STATE OF NEW HAMPSHIRE

JILL K. SIEVEKING  
DIRECTOR



OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE  
107 NORTH MAIN STREET, ROOM 109  
CONCORD, NEW HAMPSHIRE 03301-4951

April 22, 2013

Received from Commissioner, Department of Environmental Services

the following certified rule(s) filed with the Director of Legislative Services, in accordance with RSA 541-A, the Administrative Procedures Act.

Document # #10316  
Relative to: Env-A 101.104 - Definition of Incinerator.  
Number of Pages: 1  
Adopted Date: 4-22-13  
Filing Date: 4-22-13  
Effective Date: 4-23-13  
Expiration Date: N/A  
Notes: ***Organizational Rules Do Not Expire Except Pursuant to RSA 541-A:17, II***

In all communications with this office concerning the above rule(s), please cite the appropriate document number, as indicated above.

A handwritten signature in cursive script that reads "Jill K. Sieveking".

Jill K. Sieveking, Director  
Office of Legislative Services

**EVIDENCE OF LEGAL AUTHORITY**

40 CFR Part 51, Appendix V, 2.1(c)

Laws of New Hampshire, RSA 125-C:4  
Rulemaking Authority; Subpoena Power

# **TITLE X**

## **PUBLIC HEALTH**

### **CHAPTER 125-C**

#### **AIR POLLUTION CONTROL**

##### **Section 125-C:4**

###### **125-C:4 Rulemaking Authority; Subpoena Power. –**

I. The commissioner shall adopt rules under RSA 541-A, relative to:

(a) The prevention, control, abatement, and limitation of air pollution, including, but not limited to, open air source pollution, mobile source pollution, and stationary source pollution.

(b) Primary and secondary ambient air quality standards.

(c) Procedures to meet air pollution emergencies, as authorized by RSA 125-C:9.

(d) The establishment and operation of a statewide permit system, as authorized by RSA 125-C:6, XIV, RSA 125-C:11, I and RSA 125-C:11, I-a.

(e) Devices, in addition to those devices defined under RSA 125-C:2, subject to the permit requirements of RSA 125-C:11, as authorized by RSA 125-C:11, II.

(f) The exemption of certain devices and non-Title V sources from the permit requirements of RSA 125-C:11, I and the conformance of exempted devices to established standards, as authorized by RSA 125-C:11, I.

(g) The forms and information required on applications for temporary and permanent permits required under RSA 125-C:11, as authorized by RSA 125-C:12, I.

(h) Notification of and public hearing on permit applications, including exemptions from those requirements, as authorized by RSA 125-C:12, II.

(i) Fees for permit application and review, as authorized by RSA 125-C:12, IV-d.

(j) Procedures for permit application review, as authorized by RSA 125-C:11, IV, and criteria for permit denial, suspension or revocation, as authorized by RSA 125-C:13.

(k) Procedures for air testing and monitoring and recordkeeping, as authorized by RSA 125-C:6, XI.

(l) Procedures for receiving violation complaints and for rules enforcement, as authorized by RSA 125-C:15, I.

(m) Procedures for granting variances, as authorized by RSA 125-C:16.

(n) The manufacture, use, or sale of consumer products for purposes of implementing RSA 485:16-c.

(o) Applicability thresholds for emissions of particulate matter, mercury, and dioxin as provided in RSA 125-C:10-b, VII(f).

(p) The duration of time during which no additional best available control technology determination is required as provided in RSA 125-C:10-b, IV and VI.

(q) Procedures for establishing standards for and certification of any material, that is not an exempt fuel, to be combusted in a device at an affected source subject to RSA 125-C:10-b.

(r) Standards and testing requirements for biomass and eligible biomass fuel as authorized by RSA 125-C:6, XIV-a.

I-a. In adopting rules under paragraph I, the department may incorporate by reference standards issued by the California air resources board relative to certification and testing of vapor recovery equipment.

I-b. In adopting rules under subparagraph I(n), the department may incorporate by reference other state test methods and procedures that are referenced in the model rules of the Ozone Transport Commission (OTC) concerning consumer products, as defined in RSA 125-C:2, V-c.

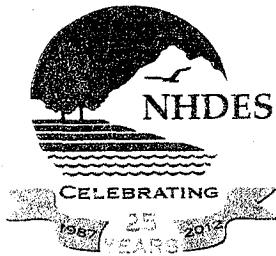
II. The commissioner is authorized to issue subpoenas requiring the attendance of such witnesses and the production of such evidence and to administer such oaths and to take such testimony as he may deem necessary.

**Source.** 1979, 359:2. 1986, 202:8. 1996, 228:19, 104; 278:2, 3. 2001, 293:5. 2003, 137:3. 2004, 175:2, eff. May 27, 2004. 2005, 173:3, eff. June 29, 2005. 2008, 113:3, eff. Aug. 2, 2008. 2010, 183:6, eff. June 21, 2010.

**COPY OF THE ACTUAL RULE**

40 CFR Part 51, Appendix V, 2.1(d)





The State of New Hampshire  
**Department of Environmental Services**

**Thomas S. Burack, Commissioner**

*Celebrating 25 Years of Protecting  
New Hampshire's Environment*



May 2, 2013

Jill K. Sieveking, Director  
Office of Legislative Services  
c/o Division of Administrative Rules  
25 Capitol Street  
State House Annex, Room 219  
Concord, New Hampshire 03301-6312

Reference Doc. #10316, Env-A 101.104

Dear Director Sieveking:

Pursuant to RSA 541-A:15, I-a, I hereby certify that the enclosed rules are the same in substance as the rules originally filed with the Office of Legislative Services, Division of Administrative Rules.

I further certify that the enclosed rules, as edited for format by the Division of Administrative Rules, is the official version of these rules which this agency is required to publish in an 8 1/2 x 11 inch loose-leaf format as part of the New Hampshire Code of Administrative Rules, under Chapter 5 of the *New Hampshire Drafting and Procedure Manual for Administrative Rules* and RSA 541-A:15, I.

Sincerely,

Thomas S. Burack  
Commissioner

Enclosure

cc: Gretchen Hamel, DES Legal Unit  
DES Public Information Center

ec: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau  
Karla McManus, DES ARD Planning and Rules Manager

[www.des.nh.gov](http://www.des.nh.gov)

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095  
(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

**As of April 23, 2013, Env-A 101.104 reads as follows:**

Env-A 101.104 "Incinerator" means a device engineered to burn or oxidize solid, semi-solid, liquid, or gaseous waste for the primary purpose of volume reduction, disposal, or chemical destruction, leaving little or no combustible material. Such devices include, but are not limited to, heat recovery systems and wood waste burners.

**Appendix**

<b>Rule</b>	<b>State Statutes Implemented</b>
Env-A 101.104	RSA 125-C:6, II

**EVIDENCE THAT NEW HAMPSHIRE FOLLOWED ALL  
PROCEDURAL REQUIREMENTS**

40 CFR Part 51, Appendix V, 2.1(e)

REQUEST FOR FISCAL IMPACT STATEMENT

**STATE OF NEW HAMPSHIRE**

**DATE** February 1, 2013

**FROM** Thomas S. Burack  
Commissioner

**AT (OFFICE)** DES

**SUBJECT** Request for Fiscal Impact Statement

**To** Legislative Budget Assistant

In accordance with NH RSA 541-A:5, enclosed please find a Request for Fiscal Impact Statement and a copy of the corresponding administrative rules for the following:

Env-A 101.104: Definition of Incinerator

Please fax the Fiscal Impact Statement to Gretchen Hamel at 271-8805.

If you have any questions, please contact Gretchen Hamel at 271-3137.

cc: Gretchen Hamel, Administrator, DES Legal Unit

ec: Karla McManus, ARD Planning and Rules Manager

**OFFICE OF LEGISLATIVE BUDGET ASSISTANT  
REQUEST FOR FISCAL IMPACT STATEMENT (FIS)**

FIS Number	Rule Number	Env-A 101.104
1. Agency Name & Address:  Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	2. RSA Authority:	RSA 125-C:4, I(a)
	3. Federal Authority:	N/A
	4. Type of Action:	
	Adoption	_____
	Amendment	_____
	Repeal	_____
	Readoption	_____
	Readoption w/amendment	<u>  X  </u>
	Interim rule	_____
	5. Have the rules expired?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
	Date Expired:	_____

6. Short Title: Definition of Incinerator

7. Contact Person:

Name: Gretchen Hamel	Title: Administrator, Legal Unit
Address: Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	Phone #: 271-3137 Fax #: 271-8805

(1) *Summarize the rule.*

The existing definition of incinerator (Env-A 101.104) is proposed to be revised to include wood waste burners in conjunction with the readoption and amendment of Env-A 1900 relative to emission standards for incinerators that are not otherwise regulated under federal rules. The proposed amendment to the definition will help to make Env-A 1900 clearer, which will benefit anyone who is using the rules.

(2) *Is the cost associated with this rule mandated by the rule or by state statute? If the cost is mandated by statute, then the rule itself may not have a cost or benefit associated with it. Please state either the statute or chapter law that is instigating this rule.*

There are no costs associated with the proposed rule, as it is a definition only. The rule is being adopted pursuant to RSA 125-C:4, I(a) to implement RSA 125-C:6, II.

(3) *Compare the cost of the proposed rule with the cost of the existing rule, if there is an existing rule.*

No changes to the substance of the rule are being proposed, so there is no difference between the costs of the proposed rule and the costs of the existing rule.

(4) *Describe the costs and benefits to the state general fund which would result from this rule.*

The proposed rule will not impose any costs on or provide any benefits to the state general fund.

(5) *Explain and cite the federal mandate for the proposed rule, if there is such a mandate. How would the mandate affect state funds?*

There is no federal mandate for the proposed rule.

## REQUEST FOR FISCAL IMPACT STATEMENT (FIS) – Page 2

- (6) *Describe the cost and benefits to any state special fund which would result.*

There will be no costs or benefits to any state special fund as a result of the proposed rule.

- (7) *Describe the costs and benefits to the political subdivisions of the state.*

The proposed rule will not impose any costs on or provide any direct financial benefits to political subdivisions of the state.

- (8) *Describe the costs and benefits to the citizens of the state.*

The proposed rule will not impose any costs on or provide any direct financial benefits to citizens of the state.

- (9) *Describe the costs and benefits to any independently owned business, including a description of the specific reporting and recordkeeping requirements upon those employing fewer than 10 employees.*

The proposed rule will not impose any costs on or provide any direct financial benefits to any independently owned businesses.

The proposed rule will not change any existing reporting or recordkeeping requirements.

*Readopt with amendment Env-A 101.104, eff. 6-30-95 (doc. #6057-A), as renumbered by doc. #8256, doc. #8304, and doc. #9839, to read as follows:*

Env-A 101.104 "Incinerator" means a device engineered to burn or oxidize solid, semi-solid, liquid, or gaseous waste for the primary purpose of volume reduction, disposal, or chemical destruction, leaving little or no combustible material. Such devices include, but are not limited to, heat recovery systems ***and wood waste burners.***

#### Appendix

Rule	State Statutes Implemented
Env-A 101.104	RSA 125-C:6, II



## FISCAL IMPACT STATEMENT

Fiscal Impact Statement for Department of Environmental Services rules governing Definition of Incinerator. [Env-A 101.104]

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the proposed rules to the existing rules.

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

None.

**C. To independently owned businesses:**

None.

**RULEMAKING NOTICE FILING**

**STATE OF NEW HAMPSHIRE**

**DATE** February 8, 2013

**FROM** Thomas S. Burack  
Commissioner

**AT (OFFICE)** DES

**SUBJECT** Rulemaking Notice

**TO** Office of Legislative Services  
Division of Administrative Rules

Please accept for filing the enclosed Rulemaking Notice for the following rules:

Env-A 101.104: Definition of Incinerators

Questions from OLS regarding the Rulemaking Notice should be directed to Gretchen Hamel at 271-3137.

Questions from the public regarding the proposed rules, public hearing, or public comment period should be directed to Karla McManus at 271-6854.

Enclosures

cc: Gretchen Hamel, DES Legal Unit Administrator

ec: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau  
Karla McManus, DES ARD Planning and Rules Manager  
ARD Distribution list

# RULEMAKING NOTICE

Notice Number _____	Rule Number _____	Env-A 101.104
1. Agency Name & Address:	2. RSA Authority:	RSA 125-C:4, I(a)
NH Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	3. Federal Authority:	N/A
	4. Type of Action:	
	Adoption	_____
	Amendment	_____
	Repeal	_____
	Readoption	_____
	Readoption w/amendment	<b>X</b>

5. Short Title: Definition of Incinerator

6. (a) Summary of what the rule says and of any proposed amendments:

Env-A 101.104, the existing definition of incinerator, is proposed to be revised to include wood waste burners in conjunction with the readoption and amendment of Env-A 1900 relative to emission standards for incinerators that are not otherwise regulated under federal rules.

6. (b) Brief description of the groups affected:

The rules affect owners and operators of incinerators that are not specifically regulated pursuant to federal incinerator or waste combustor standards in Env-A 500, Env-A 3300, or Env-A 4300.

6. (c) Specific section(s) of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statute(s) Implemented
Env-A 101.104	RSA 125-C:4, I(a)

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Karla McManus	Title:	Planning and Rules Manager
Address:	NH Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-6854
		Fax#:	(603) 271-1381
		E-mail:	Karla.McManus@des.nh.gov

The rules also can be viewed in PDF at  
<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, March 29, 2013**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, March 22, 2013 at 9:30 am.**

Place: **Room 110, DES Offices, 29 Hazen Drive, Concord NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 13:011, dated 02/08/13:

1. Compari on of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal Mandate. no impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

None.

**C. To independently owned businesses:**

None.

**11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:**

The change in definition does not have any cost, as it does not change the scope of the substantive requirements. In any event, none of the sources affected by this rule or Env-A 1900 is owned by a political subdivision. Accordingly, the proposed rules do not violate Part I, Article 28-a of the New Hampshire Constitution because they do not assign any new, modified, or expanded programs or responsibilities to political subdivisions of the state in such a way as to necessitate local expenditures.

*Readopt with amendment Env-A 101.104, eff. 6-30-95 (doc. #6057-A), as renumbered by doc. #8256, doc. #8304, and doc. #9839, to read as follows:*

Env-A 101.104 "Incinerator" means a device engineered to burn or oxidize solid, semi-solid, liquid, or gaseous waste for the primary purpose of volume reduction, disposal, or chemical destruction, leaving little or no combustible material. Such devices include, but are not limited to, heat recovery systems ***and wood waste burners.***

#### Appendix

Rule	State Statutes Implemented
Env-A 101.104	RSA 125-C:6, II

## RULEMAKING REGISTER





# NEW HAMPSHIRE RULEMAKING REGISTER

## OFFICE OF LEGISLATIVE SERVICES

ROOM 219, STATE HOUSE ANNEX  
25 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6312  
Tel. (603) 271-3680

Fax (603) 271-7871

Website: [www.gencourt.state.nh.us/rules/index.html](http://www.gencourt.state.nh.us/rules/index.html)

TDD Access:  
Relay NH 1-800-735-2964

VOLUME XXXIII, Number 7, February 14, 2013

### TABLE OF CONTENTS

1.	<u>OFFICE OF LEGISLATIVE SERVICES</u>	<u>Page No.</u>
a.	List of Notices of Proposed Rules NN 2013-13 through NN 2013-14	-i-
b.	Notices of Proposed Rules	1

#### NOTE: POSSIBLE RULE EXTENSION

If the proposed rules contain existing, regular rules being readopted or readopted with amendments, and are not adopted and effective until after the expiration date(s) of the existing rules(s), then the existing rules will nevertheless continue in effect pursuant to RSA 541-A:14-a until the proposed rules are adopted and effective.

## 2. COMMITTEE (JLCAR)

REGULAR MEETING      **Friday, February 15, 2013 9:00 a.m.**  
Rooms 305/307, Legislative Office Building

CONTINUED MEETING: **Friday, March 1, 2013 9:00 a.m.**  
Rooms 305/307, Legislative Office Building

### JLCAR MEETING DATES AND RELATED FILING DEADLINES JANUARY-JUNE, 2013

The JLCAR has voted to hold its regularly scheduled meetings for January through June, 2013 on the third Friday of the month as listed below. The minimum 14-day "deadline" prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. The JLCAR has also scheduled continued meetings as listed below on select Fridays to address items postponed from the prior regular meetings.

Regular Meeting Filing Deadline	Regular Meeting Date	Continued Meeting Date
February 1	February 15	March 1
March 1	March 15	April 5
April 5	April 19	May 3
May 3	May 17	June 7
June 7	June 21	June 28

## NEW HAMPSHIRE RULEMAKING REGISTER

### Notices of Proposed Rules

<u>Notice Number</u>	<u>Rule Number</u>	<u>Agency and Short Title of Rule</u>	<u>Page No.</u>
2013-13	Env-A 101.104	Department of Environmental Services Air Related Programs Definition of Incinerator.	1
2013-14	Env-A 1900	Department of Environmental Services Air Related Programs Incinerators (n/k/a Incinerators and Wood Waste Burners).	3

### **JLCAR MEETING DATES AND RELATED FILING DEADLINES JULY-DECEMBER, 2013**

The JLCAR has voted to hold its regularly scheduled monthly meetings for July through December, 2013 on the third Thursdays listed below. The minimum 14-day "deadline" prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. The JLCAR has also scheduled continued meetings as listed below on select Thursdays to address any items postponed from the prior regular meetings.

<b>Regular Meeting Filing Deadline</b>	<b>Regular Meeting Date</b>	<b>Continued Meeting Date</b>
July 3 (Wednesday)	July 18	August 1
August 1	August 15	September 5
September 5	September 19	October 3
October 3	October 17	November 7
November 7	November 21	December 5
December 5	December 19	None

Notice Number 2013-13Rule Number Env-A 101.104

## 1. Agency Name &amp; Address:

NH Department of Environmental Services  
29 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095

## 2. RSA Authority:

RSA 125-C:4, I(a)

## 3. Federal Authority:

N/A

## 4. Type of Action:

Adoption \_\_\_\_\_

Amendment \_\_\_\_\_

Repeal \_\_\_\_\_

Readoption \_\_\_\_\_

Readoption w/amendment X5. Short Title: Definition of Incinerator

## 6. (a) Summary of what the rule says and of any proposed amendments:

Env-A 101.104, the existing definition of incinerator, is proposed to be revised to include wood waste burners in conjunction with the readoption with amendment of Env-A 1900 relative to emission standards for incinerators that are not otherwise regulated under federal rules.

## 6. (b) Brief description of the groups affected:

This definition, in conjunction with the readoption with amendment of Env-A 1900, affects owners and operators of incinerators that are not specifically regulated pursuant to federal incinerator or waste combustor standards in Env-A 500, Env-A 3300, or Env-A 4300.

## 6. (c) Specific section(s) of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statute(s) Implemented
Env-A 101.104	RSA 125-C:4, I(a)

## 7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: Karla McManusTitle: Planning and Rules Manager

Address: NH Dept. of Environmental Services  
29 Hazen Drive; P.O. Box 95  
Concord, NH 03302-0095

Phone #: (603) 271-6854Fax#: (603) 271-1381E-mail: Karla.McManus@des.nh.gov

The rules also can be viewed in PDF at

<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-

800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: 4:00 p.m. on Friday, March 29, 2013☒ Fax☒ E-mail☐ Other format (specify):

## 9. Public hearing scheduled for:

Date and Time: Friday, March 22, 2013 at 9:30 am.Place: Room 110, DES Offices, 29 Hazen Drive, Concord NH

NN 2013-13 Continued

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 13:011, dated 02/08/13:

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s):**  
There is no difference in cost when comparing the proposed rules to the existing rules.
2. **Cite the Federal mandate. Identify the impact on state funds:**  
No federal mandate, no impact on state funds.
3. **Cost and benefits of the proposed rule(s):**
  - A. **To State general or State special funds:**  
None.
  - B. **To State citizens and political subdivisions:**  
None.
  - C. **To Independently owned businesses:**  
None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The change in definition does not have any cost, as it does not change the scope of the substantive requirements. In any event, none of the sources affected by this rule or Env-A 1900 is owned by a political subdivision. Accordingly, the proposed rules do not violate Part I, Article 28-a of the New Hampshire Constitution because they do not assign any new, modified, or expanded programs or responsibilities to political subdivisions of the state in such a way as to necessitate local expenditures.

ANNOTATIONS TO INITIAL PROPOSAL FROM THE OFFICE OF  
LEGISLATIVE SERVICES

FEB 08 2013

2/19 N

RULEMAKING NOTICE

Notice Number 2013-13

Rule Number

Env-A 101.104

1. Agency Name & Address:

NH Department of Environmental Services  
29 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095

*Consent*

2. RSA Authority:

RSA 125-C:4, I(a)

3. Federal Authority:

N/A

4. Type of Action:

Adoption

Amendment

Repeal

Readoption

Readoption w/amendment

X

5. Short Title: Definition of Incinerator

6. (a) Summary of what the rule says and of any proposed amendments:

Env-A 101.104, the existing definition of incinerator, is proposed to be revised to include wood waste burners in conjunction with the readoption with amendment of Env-A 1900 relative to emission standards for incinerators that are not otherwise regulated under federal rules.

6. (b) Brief description of the groups affected:

This definition, in conjunction with the readoption with amendment of Env-A 1900, affects owners and operators of incinerators that are not specifically regulated pursuant to federal incinerator or waste combustor standards in Env-A 500, Env-A 3300, or Env-A 4300.

6. (c) Specific section(s) of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statute(s) Implemented
Env-A 101.104	RSA 125-C:4, I(a)

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: Karla McManus

Title: Planning and Rules Manager

Address: NH Dept. of Environmental Services  
29 Hazen Drive; P.O. Box 95  
Concord, NH 03302-0095

Phone #: (603) 271-6854

Fax#: (603) 271-1381

E-mail: Karla.McManus@des.nh.gov

The rules also can be viewed in PDF at

<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: 4:00 p.m. on Friday, March 29, 2013

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: Friday, March 22, 2013 at 9:30 am.

Place: Room 110, DES Offices, 29 Hazen Drive, Concord NH

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 13-011, dated 02/08/13:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

**RULEMAKING NOTICE - Page 2**

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

None.

**C. To independently owned businesses:**

None.

**11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:**

The change in definition does not have any cost, as it does not change the scope of the substantive requirements. In any event, none of the sources affected by this rule or Env-A 1900 is owned by a political subdivision. Accordingly, the proposed rules do not violate Part I, Article 28-a of the New Hampshire Constitution because they do not assign any new, modified, or expanded programs or responsibilities to political subdivisions of the state in such a way as to necessitate local expenditures.

FINAL PROPOSAL FILING



STATE OF NEW HAMPSHIRE

DATE April 5, 2013

FROM

Thomas S. Burack  
Commissioner



AT (OFFICE) DES

SUBJECT

Final Proposal #2013-13

TO

Office of Legislative Services  
Division of Administrative Rules

In accordance with RSA 541-A:12, enclosed please find the Final Proposal Cover Sheet with attachments, including the corresponding rules, for the following:

Env-A 101.104: Definition of Incinerator

If you have any questions, please contact Gretchen Hamel at 271-3137.

Enclosures

cc: Gretchen Hamel, Administrator, DES Legal Unit

cc: Karla McManus, DES ARD Planning and Rules Manager

## COVER SHEET FOR FINAL PROPOSAL

Notice Number 2013-13 Rule Number Env-A 101.104

<p>1. Agency Name &amp; Address:</p> <p>NH Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</p>	<p>2. RSA Authority: <u>RSA 125-C:4, I(a)</u></p> <p>3. Federal Authority: <u>n/a</u></p> <p>4. Type of Action:</p> <p><input type="checkbox"/> Adoption</p> <p><input type="checkbox"/> Amendment</p> <p><input type="checkbox"/> Repeal</p> <p><input type="checkbox"/> Readoption</p> <p><input checked="" type="checkbox"/> Readoption w/amendment</p>
--	--

5. Short Title: Definition of Incinerator

6. Contact person for copies and questions:

Name: <u>Karla McManus</u>	Title: <u>Planning and Rules Manager</u>
Address: <u>NH Dept. of Environmental Services</u> <u>29 Hazen Drive; P.O. Box 95</u> <u>Concord, NH 03302-0095</u>	Phone #: <u>(603) 271-6854</u>

7. Yes ☐ No ☒ Agency requests Committee legal counsel review and delayed Committee review pursuant to RSA 541-A:12, I-a

8. The rulemaking notice appeared in the Rulemaking Register on February 14, 2013.

9. Yes ☐ N/A ☒ Agency notified policy committees, or House Speaker and Senate President, pursuant to RSA 541-A:10, I, because this is the first time this rule or its amendments have been proposed to implement newly-enacted state authority.

**SEE THE INSTRUCTIONS--PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET  
AND 2 COPIES OF THE FOLLOWING:  
(and numbered correspondingly)**

10. The "Final Proposal-Fixed Text", including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

11. Yes ☐ N/A ☒ Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

12. Yes ☐ N/A ☒ The "Final Proposal-Annotated Text" indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(e).

13. Yes ☐ N/A ☒ The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

*Readopt with amendment Env-A 101.104, eff. 6-30-95 (doc. #6057-A), as renumbered by doc. #8256, doc. #8304, and doc. #9839, to read as follows:*

Env-A 101.104 "Incinerator" means a device engineered to burn or oxidize solid, semi-solid, liquid, or gaseous waste for the primary purpose of volume reduction, disposal, or chemical destruction, leaving little or no combustible material. Such devices include, but are not limited to, heat recovery systems and wood waste burners.

#### Appendix

Rule	State Statutes Implemented
Env-A 101.104	RSA 125-C:6, II

ANNOTATIONS TO THE FINAL PROPOSAL FROM THE OFFICE OF  
LEGISLATIVE SERVICES

APR 05 2013

5  
4/8

Final Proposal No. 2013-13  
Date Filed 4/5/13

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2013-13 Rule Number Env-A 101.104

1. Agency Name & Address:

NH Department of Environmental Services  
29 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095

*CONSENT*

2. RSA Authority:

RSA 125-C:4, I(a)

3. Federal Authority:

n/a

4. Type of Action:

- ☐ Adoption  
☐ Amendment  
☐ Repeal  
☐ Readoption  
☒ Readoption w/amendment

5. Short Title: Definition of Incinerator

6. Contact person for copies and questions:

Name: Karla McManus

Title: Planning and Rules Manager

Address: NH Dept. of Environmental Services  
29 Hazen Drive; P.O. Box 95  
Concord, NH 03302-0095

Phone #: (603) 271-6854

7. Yes ☐ No ☒ Agency requests Committee legal counsel review and delayed Committee review pursuant to RSA 541-A:12, I-a

8. The rulemaking notice appeared in the Rulemaking Register on February 14, 2013.

9. Yes ☐ N/A ☒ Agency notified policy committees, or House Speaker and Senate President, pursuant to RSA 541-A:10, I, because this is the first time this rule or its amendments have been proposed to implement newly-enacted state authority.

SEE THE INSTRUCTIONS--PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET  
AND 2 COPIES OF THE FOLLOWING:  
(and numbered correspondingly)

10. The "Final Proposal-Fixed Text", including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

11. Yes ☐ N/A ☒ Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

12. Yes ☐ N/A ☒ The "Final Proposal-Annotated Text" indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(e).

13. Yes ☐ N/A ☒ The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

APPROVAL OF THE RULE BY THE JOINT LEGISLATIVE COMMITTEE ON  
ADMINISTRATIVE RULES

Jdlb

STATE OF NEW HAMPSHIRE

JILL K. SIEVEKING  
DIRECTOR



OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE  
107 NORTH MAIN STREET, ROOM 109  
CONCORD, NEW HAMPSHIRE 03301-4951

April 19, 2013

NOTICE NO. 2013-13

RULE # Env-A 101.104

RELATIVE TO: Definition of Incinerator

The Joint Legislative Committee on Administrative Rules has reviewed the Final Proposal on the above cited rule at its meeting on APRIL 19, 2013.

The Committee voted to approve the proposal. You may proceed to adopt the rules in the proposal and file them with the Office of Legislative Services, Administrative Rules. If the effective life of any existing, regular rules in your proposal was extended during the rulemaking proceeding pursuant to RSA 541-A:14-a, then all the rules in the proposal must be adopted within **30 days** of Committee approval. The rules also must be filed with an effective date not more than **60 days** from the date of filing. See Section 1.11 of Chapter 3 in the N.H. Drafting and Procedure Manual for Administrative Rules (Manual).

When filing the final rules, you are also required to file a cover letter indicating the date of final adoption and certifying the final rules are a true copy. See Section 2.21 of Chapter 3 in the Manual. The rules will become effective either at (1) 12:01 a.m. on the day after the filing, (2) 12:01 a.m. on the date specified in the cover letter to me when the rule is filed, or (3) such other date and time as specified in the cover letter, provided that the filing occurs before such effective date and time. Please send two (2) copies of the adopted rules.

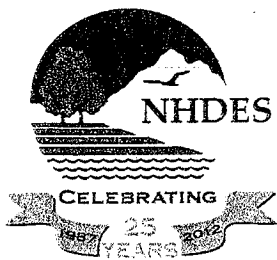
Sincerely yours,

A handwritten signature in cursive script that reads "Jill K. Sieveking".

Jill K. Sieveking, Director  
Office of Legislative Services

## ADOPTED RULE

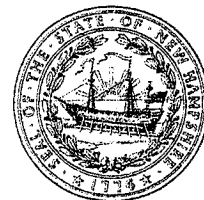




The State of New Hampshire  
**Department of Environmental Services**

**Thomas S. Burack, Commissioner**

*Celebrating 25 Years of Protecting  
New Hampshire's Environment*



April 22, 2013

Jill K. Sieveking, Director  
c/o OLS, Division of Administrative Rules  
State House Annex, Room 219  
Concord, NH 03301

Re: Adoption of Final Rules, FP #2013-13

Dear Director Sieveking:

Please be advised that I, as Commissioner of the Department of Environmental Services, have adopted the following rules:

Env-A 101.04: Definition of Incinerator

The Joint Legislative Committee on Administrative Rules approved these rules at its meeting on April 19, 2013.

A copy of the adopted rules is being filed electronically, concurrent with the e-filing of this adoption letter. The original, signed adoption letter is being sent separately by messenger mail for your records.

I, Thomas S. Burack, Commissioner of the Department of Environmental Services, hereby certify that the enclosed are true copies of the rules I have adopted.

Sincerely,

Thomas S. Burack  
Commissioner

Enclosure

cc: Gretchen Hamel, DES Legal Unit  
Public Information and Permitting Office

ec: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau  
Karla McManus, DES ARD Planning and Rules Manager

*Readopt with amendment Env-A 101.104, eff. 6-30-95 (doc. #6057-A), as renumbered by doc. #8256, doc. #8304, and doc. #9839, to read as follows:*

Env-A 101.104 "Incinerator" means a device engineered to burn or oxidize solid, semi-solid, liquid, or gaseous waste for the primary purpose of volume reduction, disposal, or chemical destruction, leaving little or no combustible material. Such devices include, but are not limited to, heat recovery systems and wood waste burners.

#### Appendix

Rule	State Statutes Implemented
Env-A 101.104	RSA 125-C:6, II

**EVIDENCE OF PUBLIC NOTICE**

40 CFR Part 51, Appendix V, 2.1(f)

**STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTA**

STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES AIR RESOURCES DIVISION  
CONCORD, NH NOTICE OF PUBLIC HEARING In accordance with RSA 541-A:6 and N.H. Admin. Rule Env-A 204.01(b) and 40 CFR 51.102, notice is hereby given that the New Hampshire Department of Environmental Services, Air Resources Division (the Department), will hold a public hearing on proposed amendments to the NH Code of Administrative Rules and the State Implementation Plan on Friday, March 22, 2013. The public hearing will be held in Room 110, first floor of the offices of the Department, 29 Hazen Drive, Concord, NH. At 9:30 a.m. on Friday, March 22, 2013, the Department will receive testimony from the public concerning the proposed readoption with amendments of two rules, Env-A 1900 -Incinerators; and Env-A 101.104 - Definition of Incinerators. The existing rules, Env-A 1900, provide emission standards for incinerators that are not otherwise regulated under federal rules. Env-A 1900 is proposed to be readopted because it is scheduled to expire on February 26, 2013. Revisions are proposed to cover incinerators for which no specific federal rules apply and to delete sections pertaining to incinerators that are now subject to more stringent federal standards or are covered by other state rules. In a companion rulemaking, the definition of incinerator, Env-A 101.104, is being amended to include wood waste burners. Pursuant to RSA 541-A:14-a, I, the existing rules will continue in effect for the duration of this readoption proceeding. Testimony may be presented orally and/or in writing at the public hearing. The Department will receive written comments on the proposed rules until 4:00 p.m. on Friday, March 29, 2013. Please submit written comments to Karla McManus, Planning and Rules Manager, Air Resources Division, NH Department of Environmental Services, P.O. Box 95, Concord, NH 03302-0095, Fax (603) 271-7053 or e-mail at [Karla.McManus@des.nh.gov](mailto:Karla.McManus@des.nh.gov). Copies of all documentation pertaining to rulemakings for all air rules are available for inspection at the offices of the Department at the address stated above. The proposed rule is also posted at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>. Questions regarding the proposed rulemakings should be directed to Karla McManus at (603) 271-6854. Thomas S. Burack Commissioner NH Department of Environmental Services Dated: February 19, 2013

Appeared in: **The Union Leader** on Thursday, 02/21/2013

[Back](#)

Env-A 1900

# UNION LEADER CORPORATION

P O BOX 9513  
MANCHESTER, NH 03108

0000059625  
STATE OF NH-AIR RESOURCES COMM  
VALERIE DAVID  
PO BOX 95  
CONCORD NH 03302-0095

I hereby certify that the legal notice: (0000440820) PUB HEARING 3/22 9:30AM  
was published in the New Hampshire Union Leader  
printed at Manchester, NH by the Union Leader Corp.

On:  
02/21/2013.

State of New Hampshire  
Hillsborough County

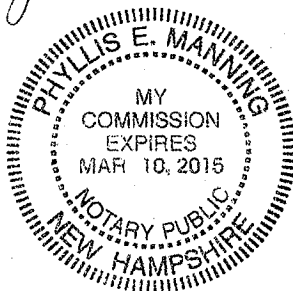
Subscribed and sworn to before me this

21

day of

February 2013

Phyllis E Manning  
Notary Public

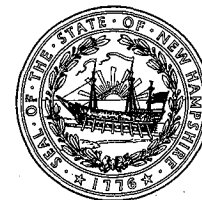


**CERTIFICATION OF PUBLIC HEARING**

40 CFR Part 51, Appendix V, 2.1(g)



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

July 23, 2013

I Hereby Certify:

That, in accordance with the provisions of NH RSA 541-A:11 and section 110(a) of the Clean Air Act, as amended, public notice was given specifying that a public hearing regarding the proposed readoption with amendments of Env-A 101.104 of the NH Code of Administrative Rules was to be held on March 22, 2013 at 9:30 a.m. in room 110 of the offices of the New Hampshire Department of Environmental Services, Air Resource Division, 29 Hazen Drive, Concord, N.H. The notice was published at least 30 days prior to the date of such hearing in a newspaper of general circulation. The notice stated that copies of documentation regarding the readoption with amendment of Env-A 101.104 of the NH Code of Administrative Rules could be examined at the Department's office or at: <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>.

That the public hearing was held on March 22, 2013 at 9:30 a.m. in room 110 of the offices of the New Hampshire Department of Environmental Services, Air Resources Division, 29 Hazen Drive, Concord, NH, in accordance with the public notice. Since no members of the public attended the hearing, the presentation of the proposed rule and recordation of the presentation were determined to be unnecessary. Therefore, the hearing was closed at 9:42 a.m., and a memo stating the circumstances was added to the file.

That the above statements are true to the best of my knowledge and belief.

Craig A. Wright  
Acting Director  
Air Resources Division

**COMPILATION OF PUBLIC COMMENTS AND NEW  
HAMPSHIRE'S RESPONSE THERETO**

40 CFR Part 51, Appendix V, 2.1(h)



**COMPILATION OF PUBLIC COMMENTS AND NEW HAMPSHIRE'S  
RESPONSE TO ENV-A 101.104**

No public comments were received in response to Env-A 101.104.